IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8373 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHCHANDRA NARSINHBHAI SOMANI

Versus

KALOL MUNICIPALITY

Appearance:

1. Special Civil Application No. 8373 of 1989
MRS DT SHAH for Petitioner
MR MI PATEL for Respondent No. 1, 2, 3

2. Special Civil ApplicationNo 4434 of 1996
MRS DT SHAH for Petitioner
MR MI PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 04/05/2000

ORAL JUDGEMENT

#. Ms.D.T.Shah, learned advocate for the petitioner. Mr.M.I.Patel, learned advocate for the respondent. The present petition is filed by the petitioner on the ground that the petitioner was working as Badli Worker with the respondent no.1 since 1985 as a work charge operator on drainage pumping station. The case of the Municipality is that the petitioner was not working as work charge operator, he was employed as a Badli Worker only but was to work as an operator on drainage pumping statioin (para 4 of the affidavit in reply). The petitioner was constrained to approach this court as the respondent Nagar Palika issued an advertisement on 23.11.1989 for the recruitment to various posts and including that of operator It was the case of the petitioner that as the petitioner was working with the respondent Nagar Palika for all these years. The respondent Nagar Palika ought to have considered the case of the petitioner, for appointing him on regular basis. For his claim the petitioner has placed reliance on a judgment of this court in Spl.C.A.No.5644/83 (Coram : A.P.Ravani,J) dated 14.12.1983 wherein this court has held that :-

"It is an undisputed position list so prepared.
It is an undisputed position that in Reference (IT) No.249 of 1976 there was a settlement between the Municipality and the workmen employed by it. The contention of the Municipality is that the Municipality prepares a list on the basis of the seniority but thereafter the list is placed before the Selection committee and as per the recommendation of the staff selection committee the persons are appointed to the permanent posts. Thus the basis of selection is not seniority, according to the Municipality. As per the seniority list, the person concerned gets a right to be considered only. on the fact of it, this cannot be considered to be the correct meaning of the settlement arrived at between the parties, when the Municipality agreed to maintain a seniority list while considering the question of making daily wage workers permanent, it is clear that on the basis of that seniority list

only the daily wage workers were required to be made permanent. Had it not been so, the settlement arrived at looses its meaning because the eligible persons have otherwise also right to be considered for the permanent posts. The very fact that the Municipality agreed to maintain a seniority list of the daily wage workers for the purpose of making appointment on permanent basis indicates that the Municipality had agreed to make appointment on permanent basis in accordance with seniority. There is no dispute about the fact that the petitioner is senior to respondents Nos.2,4 and 5. In this view of the matter, the petition requires to be allowed."

#. On perusal of the order sheet it is revealed that, this court while issuing notice on 7.12.1989 was pleased to grant relief to the effect that "meanwhile respondents are directed not to make any appointment to the post in question pursuant to the advertisement dated 23.11.1989". Thereafter, the Hon'ble Court was pleased to continue that interim relief till further orders on 13.12.1989 and thereafter this court issued rule on 28.11.1991.

#. It is the case of the petitioner that the petitioner is working for last so many years in the department and in view of the judgment and order of this court in Spl.C.A. No.5649/83 respondent Nagar Palika is required to follow
the settlement arrived at in Ref. (IT) No.249/76.

#. In view of the aforesaid discussion, the petition is allowed. The respondent Nagar Palika is directed to consider the case of the petitioner for the appointment to the post of operator within 8 weeks from the receipt of the writ of this court. Rule is made absolute with no order as to costs. D.S. is permitted.

kks